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January 31, 2017

VIA ECF

The Honorable Kimba M. Wood
United States District Court for the Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *In re Levothyroxine Antitrust Litigation* (All Actions), Civ. No. 16-9900, consisting of:

- *Plumbers & Pipefitters Local 178 Health & Welfare Trust Fund v. Lannett Co., Inc. et al.*, Civ. No. 16-9890 (KMW);
- *1199SEIU National Benefit Fund v. Lannett Company, Inc. and Mylan Pharmaceuticals, Inc.*, Civ. No. 16-9666 (KMW);
- *FWK Holdings, L.L.C. v. Lannett Company, Inc., et al.*, Civ. No. 16-9900 (KMW);
- *Cesar Castillo, Inc. v. Lannett Company, Inc., et al.*, Civ. No. 16-9949 (KMW); and
- *American Federation of State, County and Municipal Employees District Council 37 Health & Security Plan v. Lannett Co., Inc., et al.*, Civ. No. 17-643 (KMW).

Dear Judge Wood:

Hausfeld LLP and Glancy Prongay & Murray LLP represent Plumbers & Pipefitters Local 178 Health & Welfare Trust Fund ("Local 178") in certain antitrust actions alleging price-fixing of generic drugs by, among others, Lannett Company, Inc.; Mylan Pharmaceuticals, Inc.; and Sandoz, Inc. Local 178's complaint in the above-captioned litigation before this Court—concerning price-fixing of Levothyroxine—is the culmination of its ongoing, multi-year investigation into anticompetitive conduct in the generic drug industry. We write to inform the Court of recent developments that counsel against scheduling an initial conference and inviting briefing concerning appointment of class counsel at this time.

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As counsel for 1199SEIU National Benefit Fund and American Federation of State, County and Municipal Employees District Council 37 Health & Security Plan ("1199SEIU counsel") note in their letter of January 27, 2017, Case No. 1:16-cv-09890-KMW, Dkt. 13, all parties in the above-captioned actions recently agreed to a stipulation and proposed Pretrial Order No. 1, which this Court entered in all the above-captioned cases on January 24, 2017 and January 31, 2017. In a footnote to that stipulation, all parties noted that "[a] direct purchaser action making similar allegations to the instant cases has also been filed in the Eastern District of Pennsylvania. *Rochester Drug Co-Operative, Inc. v. Lannett Co., Inc., et al.*, Civ. No. 16-6671 (CMR) (Dec. 28, 2016 E.D. Pa.). The plaintiff in that case made a motion on January 5, 2017, to the Judicial Panel on Multi-District Litigation [("JPML")] to transfer the Direct Purchaser Actions to the Eastern District of Pennsylvania for centralization in MDL No. 2724, *In re Generic Digoxin and Doxycycline Antitrust Litigation*."

Rochester Drug Co-operative, Inc.'s motion proposes that the JPML transfer to the Honorable Cynthia M. Rufe—who since August 2016 has presided over MDL No. 2724 (concerning allegations of price-fixing of Digoxin and Doxycycline by Lannett Company, Inc. and Mylan Pharmaceuticals, Inc., among other defendants)—all subsequently filed direct-purchaser antitrust class actions alleging violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, with respect to the following drugs: Clobetasol, Desonide, Econazole, Fluocinonide, Levothyroxine, and Propranolol. Rochester Drug Co-operative, Inc. noted in support of transfer that (1) there is substantial overlap among the plaintiffs and the generic pharmaceutical manufacturer defendants in these antitrust actions, all of which involve numerous common questions of fact; (2) transfer for coordination or consolidation "will prevent duplication of discovery, eliminate the possibility of conflicting pretrial rulings, and conserve judicial resources"; and (3) a related criminal investigation "is being conducted with the assistance of the FBI's Philadelphia Division and the U.S. Attorney's Office for the Eastern District of Pennsylvania." MDL No. 2724, Dkt. 125-1.

Since that time, there have been a number of important developments that bear on—and ultimately militate against—1199SEIU counsel's request for immediate leadership briefing and a consolidated initial conference in early March.

On January 6, 2017, the JPML ordered that all responses to Rochester Drug Co-operative, Inc.'s motion be filed on or before January 27, 2017 (later amended to January 30, 2017) and that "[i]n their briefs, the parties should address what steps they have taken to pursue alternatives to centralization (including, but not limited to, engaging in informal coordination of discovery and

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scheduling, and seeking Section 1404 transfer of one or more of the subject cases)." MDL No. 2724, Dkt. 127, 132.

On January 19, 2017, the International Union of Operating Engineers, Locals 302 and 612 Construction Industry Health and Security Fund filed suit in the Eastern District of Pennsylvania, alleging on behalf of a proposed class of end-payers, that defendants Lannett Company, Inc. and Mylan Pharmaceuticals, Inc. "conspir[ed] to raise the prices of and allocate markets and customers for generic levothyroxine sodium tablets." *Int'l Union of Operating Engineers, Locals 302 and 612 Construction Industry Health and Security Fund v. Lannett Co., Inc. and Mylan Pharmaceuticals, Inc.*, Case No. 2:17-cv-00293-CMR (E.D. Pa.), Dkt. 1.

On January 25, 2017, the Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund also filed suit in the Eastern District of Pennsylvania, alleging on behalf of a proposed class of end-payers, that defendants Lannett Company, Inc. and Mylan Pharmaceuticals, Inc. "conspir[ed] to fix, raise, maintain and stabilize the prices of Levothyroxine." *Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund v. Lannett Co., Inc. and Mylan Pharmaceuticals, Inc.*, Case No. 2:17-cv-00354-CMR (E.D. Pa.), Dkt. 1.

Finally, just yesterday, the JPML received 14 responses (spanning over 200 pages) to Rochester Drug Co-operative, Inc.'s motion from interested parties. Some of those responses support the proposed transfer for coordination or consolidation (and extending it to include all end-payer actions), while others oppose the motion in part or in full. Local 178 welcomes the opportunity to litigate and try its Levothyroxine case before this Court but is ultimately persuaded of the efficiencies of centralization of all direct-purchaser and end-payer actions in a single MDL proceeding, particularly given the considerable overlap among defendants in the various actions, the nature of the conduct alleged, and the ongoing federal criminal investigation in the Eastern District of Pennsylvania. MDL No. 2724, Dkt. 191.

Given that the JPML will soon decide whether to transfer the above-captioned cases to the Eastern District of Pennsylvania, Local 178 respectfully submits that it would be premature to schedule a consolidated initial conference and propose a leadership structure at this time, and likely could prove a waste of the Court's and the parties' resources. If the JPML determines that the above-captioned actions are not subject to transfer, the parties can inform the Court promptly and propose a schedule for leadership briefing and a consolidated initial conference. We articulated these concerns to 1199SEIU counsel as well, who nevertheless suggested to the Court that "it had received no objection to requesting that a Consolidated Initial Conference take place

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from March 1 through March 3, 2017, at a date and time convenient for the Court."

In the event that the Court would nevertheless prefer to take up appointment of class counsel now and convene a consolidated initial conference on March 1, 2, or 3, 2017, we stand ready to submit a proposed leadership structure designed to efficiently prosecute the above-captioned actions on behalf of a class of end-payer purchaser plaintiffs. Thank you for Your Honor's attention to this matter.

Sincerely,

/s/ Irving Scher

Irving Scher

The Court will not hold an initial Rule 16 conference in any of its Levothyroxine cases until the JPML has acted on the motion to transfer cases to the E.D. Pa.

2-8-17
SO ORDERED, N.Y., N.Y.
Kimba M. Wood
KIMBA M. WOOD
U.S.D.J.